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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

N.A.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E071578

(Super.Ct.No. RIJ120031)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Walter H. Kubelun,
Temporary Judge. (Cal. Const., art. VI, § 21.) Petition denied.

David Goldstein for Petitioner.

No appearance for Respondent.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and
Prabhath D. Shettigar, for Real Party in Interest.

N.A. (Mother) is the mother of A.A., who was six months old on the date of the challenged orders. Mother asks this court to set aside the orders of the trial court on October 30, 2018, bypassing family reunification services and setting a hearing under Welfare and Institutions Code section 366.26.¹ Mother asks this court to remand the case with instructions to set aside the orders bypassing reunification services and setting the section 366.26 hearing, and to grant reunification services. For the reasons discussed *post*, the petition is denied.

FACTS AND PROCEDURE

Detention—May 2018

A.A. was born prematurely at 33 weeks gestation. At that time, Mother tested positive for amphetamine and marijuana, and A.A. tested positive for amphetamine. A.A. weighed three pounds four ounces, was being fed through a tube, and was placed in the neonatal intensive care unit (NICU) to observe for withdrawal symptoms. Hospital personnel reported Mother had been diagnosed with bipolar disorder, schizophrenia, depression, and anxiety and was acting irrationally. Mother was unsteady on her feet and hospital personnel had to catch her to prevent her from falling while she holding A.A. in the NICU. Mother yelled and screamed during this visit and appeared to think A.A.'s small size was cute rather than concerning. Hospital personnel believed it would be safer for Mother not to visit the child in the NICU because her behaviors may not be safe for A.A. Mother seemed not to be in pain after having a cesarean section delivery and was

¹ Section references are to the Welfare and Institutions Code except where otherwise indicated.

suffering extreme symptoms that appeared to hospital personnel to be a combination of withdrawal and a manic state—she was constantly scratching herself, and would jump out of bed and fall on the ground. This made it impossible to bind her midsection, which was a normal precaution after a cesarean section. The hospital employed a “sitter” to stay with Mother in her room because of her behaviors.

Mother’s initial interview with social workers in her hospital room was concerning. She would strip off her gown, demand the male social worker leave the room, then invite him back in and again strip off her gown. Mother struggled to stay awake, provide consistent answers, or engage in a logical conversation, and sometimes appeared confused. Mother’s girlfriend of five years was present in the room and answered many questions on Mother’s behalf. Mother stated that A.A.’s father was named Dwayne, but she did not know his last name or contact information because she was a prostitute and he was a client. Mother stated she was not receiving any mental health care, and had previously stopped taking medications for her bipolar disorder and schizophrenia because they made her sleepy. Mother denied using alcohol, though she tested positive for alcohol use just prior to the cesarean section. Mother admitted using methamphetamine four days prior to giving birth, and said she had been using it “all [her] life.” Mother demanded a cigarette and threatened to leave the hospital when the nurses told her she could not have one. She yelled “f--- the doctors”, slammed herself back against the bed, kicked her feet, and had a “temper tantrum.”

The social worker visited the home where Mother and her girlfriend were staying. They lived in a very small basement room with blankets and pillows on the floor and

some shelves. There were no provisions for an infant. The owner of the home stated Mother could not come back to the home with an infant, and confirmed that Mother had used drugs throughout her pregnancy.

Mother had lost custody of a previous child, born in early 2009. A case was opened in 2010 when a mental health client came to her own appointment with the child and stated that she provided child care for Mother as needed while Mother worked as a prostitute. It was alleged the child was babysat out on the streets rather than in a home. It was further alleged Mother would tape the child's mouth shut or hold him down when he would move around too much. The child was eventually placed with his father. Reunification services to Mother were terminated in 2011 when she failed to complete or benefit from the services.

On May 15, 2018, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition regarding A.A. As to Mother², the allegations under subdivision (b), failure to protect, were: (1) she has chronic and unresolved substance abuse issues and used drugs during her pregnancy, and A.A. tested positive for amphetamines at birth; (2) mother lacks appropriate resources to provide A.A. with adequate food, clothing, shelter, medical treatment, and protection; (3) Mother has unresolved mental health issues and has failed to obtain treatment; (5) Mother has a child protection services history with a prior child because of substance abuse and mental health issues, failed to benefit from services, and did not reunify with the child; and (6)

² The child's father was not identified, and so the allegations against him are irrelevant to this proceeding.

Mother has a criminal history including prostitution, disorderly conduct, possessing controlled substances, vandalism, and petty theft, and remains on summary probation.

At the detention hearing held on May 17, 2018, the court ordered A.A. detained, granted supervised visitation on the condition Mother passed a drug test before each visit, and ordered services for Mother, including drug treatment, mental health and parenting services.

Jurisdiction and Disposition—June to October 2018

The Jurisdiction Report

The social worker filed the jurisdiction and disposition report on June 5, 2018. DPSS recommended the court deny Mother reunification services under section 361.5, subdivisions (b)(10) (failure to reunify with a half sibling), and (b)(13) (long-term drug use).

The report detailed Mother's horrific description of her own childhood, which Mother characterized as "good" until her grandmother died when Mother was age 13. Mother stated her own mother left her in the hospital when she was born, and so her grandmother gained custody of her. Mother did not see her own mother until she was five years old. At that time, her mother took her to Big Bear, and while they were there, Mother's cousins molested her. When her own mother found out, she called the five-year-old girl a "slut whore" and pushed her off the second story of a building, causing a severe head injury. Mother's grandmother kept her away from her mother after that. However, when the grandmother died, Mother went to live with her mother and father. Soon after, Mother reported, her father raped her. Her mother's response when walking

in during the rape was to say, “sorry for interrupting,” and leave the room. Mother reported that one of her brothers also raped her. After Mother reported the sexual assaults to law enforcement, she was removed from her parents’ care and placed in a group home. Mother believed it was unfair that she was punished by being “kept locked in a group home” while her parents were “free out on bail.” Mother acted out, used drugs, and spent the rest of her youth bouncing between group homes and juvenile detention. Mother stated she began prostituting at age 14 after running away from detention.

At the jurisdiction hearing held on July 13, 2018, the court found true the allegations in the petition and ordered Mother to undergo two psychological evaluations.

First Psychological Evaluation

Dr. Garrett completed a psychological evaluation of Mother on August 1, 2018. The purpose of the evaluation was to “ascertain [Mother’s] capacity to function in a parental role as well as the benefit from services.” Dr. Garrett diagnosed Mother with amphetamine and cannabis use disorder, moderate depression, and “turbulent personality disorder with histrionic features.” Dr. Garret commented that Mother’s behavior was what could be expected of someone who had used methamphetamine for 25 years; he described her as impulsive, erratic, and showing poor understanding of social situations. Mother seemed not to understand the damage she had done to her two children, she was severely immature, and she lacked judgment. Dr. Garret believed Mother would present a danger to an infant in terms of daily care and opined that Mother should not have contact with A.A. without supervision. Dr. Garrett concluded that the services provided to

Mother were unlikely to improve her mental health, and “strongly” recommended the court consider terminating her parental rights.

Addendum Report

In an addendum report filed August 23, 2018, DPSS added section 361.5, subdivision (b)(2), as a basis for denying services to Mother in that Mother suffers from a mental disability that renders her incapable of utilizing reunification services. DPSS reported that Mother had left a 90-day inpatient drug treatment program after 33 days and immediately enrolled in the facility’s outpatient program because she wanted to be with her girlfriend. Mother continued to visit with A.A. twice a week. Mother’s girlfriend joined her during one of those visits each week. Both consistently tested negative for controlled substances during the duration of the dependency. Negative tests were a precondition for each visit. In July and August, Mother’s visits with A.A. were problematic. Mother was excited to visit with A.A. and interacted with him throughout the visits. In addition, Mother was open to direction from staff regarding how to hold, feed, burp, and change A.A. safely, and was getting better about doing so without direction. However, Mother was often rough with A.A. and needed frequent redirection. Mother had difficulty when A.A. cried or was fussy, and seemed to take it personally, making comments about A.A. not liking her because she was a bad mom. Once Mom stated she wanted A.A. to vomit on her so she could smell like him all day. She proceeded to throw him up and down not long after feeding him, thus inducing him to vomit all over the both of them. Mother ran from the visitation room to the hallway and lobby, telling everyone how happy she was that A.A. had vomited on her. One day

Mother told the social worker that A.A. was getting fat and needed to go on a diet.

Another day she fed baby food to the three and one-half months old A.A. When advised that A.A. was too young for solid food, Mother stated he was her child and she could feed him if she wanted to. Another time when a staff member walked by the visitation room and looked in, Mother stated she would hold A.A. up by his ankles next time so the staff member would have something to report. Mother needed redirection when she failed to properly support A.A.'s head. Mother replied that A.A. should be able to hold his head up on his own and should not need help.

Second Psychological Evaluation

Dr. Suiter provided his psychological evaluation of Mother on September 25, 2018. One of the purposes of the evaluation was to assess Mother's ability to benefit from reunification services. Mother did not behave erratically during her sessions with Dr. Suiter as she had with Dr. Garrett. Dr. Suiter's conclusions were not quite as alarming as Dr. Garrett's regarding Mother's ability to safely care for a child. Dr. Suiter diagnosed mother with schizophrenia and severe amphetamine use disorder (in remission). The results of psychological testing indicated no "overt psychopathology," although two of the tests were invalid because Mother attempted to portray herself positively. The tests showed that Mother "may have some difficulty with rules and authority and may have some history of acting out behaviors," "may be prone to take offense easily and have some occasional mental confusion," and has "a potential to develop hallucinations and delusions." Dr. Suiter ultimately opined that Mother "would have great difficulty being able to adequately care for her child on her own and would require very frequent contact,

support and direction.” As to Mother’s ability to benefit from reunification services, Dr. Suiter concluded “she would have great difficulty fully benefiting from services at this juncture due to the combination of her diagnostic presentation and history.”

Final Addendum Report

In the final addendum report filed October 25, 2018, DPSS maintained its recommendation of no reunification services, based on section 361.5, subdivision (b)(2), (b)(10), and (b)(13). DPSS recommended visits be reduced to once a month. Mother continued to participate in outpatient substance abuse treatment and consistently tested negative for controlled substances. Mother appeared motivated and was doing well in her parenting class. Mother was receiving mental health services, including medication, and asked for authorization to participate in individual counseling. Mother and her girlfriend were improving in dealing with A.A. when he cried during visits. They would remain calm and sooth him appropriately.

Disposition Hearing and Challenged Orders

The disposition hearing was held on October 30, 2018. Mother testified about the services in which she was participating, and that she had been clean and sober for six months. She had learned from parenting classes and was eager to have A.A. in her custody. Mother was about to begin individual counseling. Mother testified she was taking medication for seizures. However, she was not taking any other medications for schizophrenia or bipolar disorder because she stated those conditions were drug-induced, and she believed she no longer suffered from them.

After hearing argument from the parties, the court commended Mother for completing six months of sobriety after a drug abuse history of 25 years. However, the court concluded that the law was clear, the two psychiatric evaluations were in agreement that Mother was not likely to benefit from services, and the court was “going to go with these two expert opinions.” The court denied reunification services under section 361.5, subdivision (b)(2), (b)(10), and (b)(13). The court set the section 366.26 hearing for February 26, 2019, but allowed Mother to continue receiving services. The court set visitation at once a week so Mother could continue to bond with A.A., and encouraged Mother to continue in services with the goal of possibly filing a Judicial Council Form, form JV-180, if appropriate.

Mother filed a timely notice of intent to file this writ petition pursuant to California Rules of Court, rule 8.452.

DISCUSSION

Mother contends the record contains insufficient evidence to support the trial court’s decision to bypass reunification services under section 361.5, subdivision (b)(2).

Generally, the juvenile court is required to provide reunification services to a child and the child’s parents when a child is removed from parental custody under the dependency laws. (§ 361.5, subd. (a).) The purpose of providing reunification services is to “eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) It is also the intent, however, of the Legislature “that the dependency process proceed with deliberate speed and without

undue delay.” (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1151.)

“Thus, the statutory scheme recognizes that there are cases in which the delay attributable to the provision of reunification services would be more detrimental to the minor than discounting the competing goal of family preservation. [Citation.] Specifically, section 361.5, subdivision (b), exempts from reunification services ‘ “those parents who are unlikely to benefit” ’ [citation] from such services or for whom reunification efforts are likely to be ‘fruitless’ [citation].” (*Jennifer S. v. Superior Court* (2017) 15 Cal.App.5th 1113, 1120.)

When the juvenile court concludes reunification efforts should not be provided, it “ “fast-tracks” ’ ” the dependent minor to permanency planning so that permanent out-of-home placement can be arranged. (*Jennifer S. v. Superior Court, supra*, 15 Cal.App.5th at p. 1121.) The statutory sections authorizing denial of reunification services are commonly referred to as “bypass” provisions. (*Ibid.*)

Under the bypass provisions in section 361.5, reunification services need not be provided to a parent if the court finds by clear and convincing evidence: “(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services.” (§ 361.5, subd. (b)(2).)

This court reviews the denial of services under section 361.5, subdivision (b)(2), for substantial evidence. (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474.) To support the required finding, the court “must obtain the reports of two qualified experts.” (*Id.* at p. 473.) However, the experts need not agree regarding the parent’s

mental disability. In addition, the court retains the authority to make reasonable inferences from this evidence and arrive at its own conclusions regarding the parent's ability to benefit from reunification services. (*Id.* at p. 474.)

Here, Dr. Suiter concluded that Mother suffered from schizophrenia and amphetamine use disorder, which disorder was currently in remission while Mother abstained from drug use. Regarding her ability to benefit from reunification services, Dr. Suiter concluded "she would have great difficulty fully benefiting from services at this juncture." Dr. Garrett was more emphatic. He diagnosed Mother with substance abuse disorders, moderate depression, and a turbulent personality with histrionic features. More to the point, Dr. Suiter concluded Mother was unlikely to maintain any long-term improvement in her mental health from services, and strongly recommending the court terminate parental rights. Dr. Suiter further warned that Mother should not have unsupervised contact with A.A. These two strong recommendations, accompanied by Mother's testimony that she was not taking any psychiatric medications and did not believe she had any current psychiatric issues, and the filed CPS reports documenting Mother's sometimes bizarre interactions with A.A. and social workers even after receiving services, are substantial evidence to support the trial court's conclusion that Mother suffers from a mental disability that renders her incapable of benefiting from reunification services. We reach this conclusion while recognizing Mother's commendable success in maintaining six months of sobriety after a 25-year history of drug use.

The court appropriately denied Mother reunification services under section 361.5, subdivision (b)(2). Additionally, because we find that the court properly ordered a bypass of services pursuant to that subdivision, we further find no need to review the juvenile court's order to bypass services pursuant to section 361.5, subdivision (b)(10) and (b)(13), which were referred to, but not argued, on page 8 of the petition.

DISPOSITION

The petition is denied.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

RAPHAEL
J.